IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.8211 OF 2004

Smt.Chanchala Vijay Prasad ..Petitioner

Vs.

Vijay Kumar Prasad ..Respondent

...

Mr.M.B.Shah with Piyush Shah for Petitioner
Mr.V.M.Bhardwaj for Respondent

...

CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 24,2005

P.C.:

1. Heard Mr.Shah, the learned counsel for the petitioner-wife and Mr.Bhardwaj, the learned counsel for the respondent-husband.

2. The respondent is the petitioner before the learned Civil Judge S.D. at Panvel in HMP No. 6 of 1997 which has been filed for seeking divorce. In the said proceedings, the petitioner-wife submitted an application for amendment of her written statement on 30.7.2004 supported by an affidavit. The application was registered as Exh.203 and was opposed by filing say by the husband at Exh.205. After hearing both the parties, the learned Civil Judge J.D.at Panvel by the impugned order dated 3.8.2004

has rejected the amendment application at Exh. 203.

3. The elaborate affidavit submitted by the wife before the Court below also went to show that the marriage between the parties has reached an irretrievable stage. Mr.Shah, the learned counsel for the petitioner very fairly stated that it would be in the interest of both the parties that they separate from each other and the husband is made to pay an appropriate amount of alimony to be paid on regular basis or one time amount so that the wife is not driven to hardship after she is separated. It is thus, clear that the resistance of the wife to the proceedings pending before the Court below for separation at the instance of the husband no more remains. In such circumstances, if the proposed amendment in para 2(C) are allowed to be kept on record only for the perusal of the Court below and which may in fact, assist the cause of separation between the parties, the husband is not likely to be prejudiced.

4. Taking into consideration the stand of both the parties as expressed before this Court, the only issue that remains to be determined by the Court below is regarding the alimony to be fixed depending upon the various factors like the income of the husband, his dependent family members and also the

means of livelihood for the wife's future, this exercise can be undertaken by the Court below.

5. I therefore, record that both the parties agree that they need to separate from each other and the only issue that is required to be adjudicated by the Court below in HMP NO. 6 of 1997 is regarding the amount of alimony/maintenance to be paid by the husband on such separation. While passing the order of separation the Court below may, if so required, refer to the amendment sought to be made in para 2(C) in the amendment application at Exh.203. The final order in the pending proceedings be passed as expeditiously as possible and preferably within a period of three months from the receipt of the writ from this Court. While determining the amount of alimony, the Court below would not be influenced by any observations made in this order.

6. The petition is therefore, disposed of in terms of the above directions. Writ to go forthwith.

[B.H.MARLAPALLE,J.]